IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.25 of 2001.

Judgment reserved on:06.12.2006.

Date of decision: 01.01.2007

Ashok Kumar …**Petitioner**

Versus

Hon'ble High Court of H.P. & Anr. …**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr.Kuldip Singh, Senior Advocate with Mr.Bimal Gupta, Advocate..**

For Respondent No.1: **Mr.B.N. Gupta, Advocate.**

Dev Darshan Sud, J.

The petitioner has challenged the order dated 21.12.2000, Annexure P-7 to the writ petition, whereby the appointment of the petitioner to the post of Driver has been revoked.

Brief facts of the case are that the petitioner was engaged as Orderly by the learned District Judge, Nahan for a period of 89 days which appointment was renewed from time to time. In March, 2000, applications were invited by the learned District Judge, Nahan, for the post of driver. Petitioner submits that on 31.3.2000, he had applied for being

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

considered to the post as aforesaid. According to the allegation in the petition, a Selection Committee was constituted, and the petitioner was asked to appear before the said Committee on 7.5.2000 for the test/interview. The Committee, according to him, comprised of Chief Judicial Magistrate, Nahan, the Additional Chief Judicial Magistrate, Paonta Sahib. The petitioner alleges that Shri Hira Singh, who was working as a driver with the Chief Judicial Magistrate, Nahan, and having more than 30 years driving experience, was also associated with the selection process. Petitioner submits that he was subjected to the practical of test to test his driving skills. In the interview about ten candidates had participated. The petitioner was offered appointment as driver on temporary basis in the Nahan Civil and Sessions Division in the pay scale of Rs.3330-110-3660-120-4400-150-50000-160-5800-6200. He, accordingly, joined the post and started discharging the duties assigned to him. It is alleged that by a communication Annexure P-7, his appointment was revoked. Petitioner's case is that he was never informed regarding any complaint against his working or irregularities in his appointment as a driver.

Appointment to the post of driver is governed by the Himachal Pradesh Subordinates Staff (Recruitment, Promotion and Condition of Service) Rules, 1997. The Rule relevant for the purposes of recruitment of drivers is reproduced hereunder:-

> "By direct recruitment from amongst the candidates at least Middle pass or equivalently qualified candidates possessing a valid driving license for driving light and/or heavy vehicles with an experience of five years.
>
> Provided that selection will be made on merit in proficiency test in driving".

There is no dispute that the petitioner possesses these qualifications.

Petitioner submits that prior to the issuance of Annexure P-7 revoking his appointment, no show cause notice or communication of any nature has been issued to him and he has not been apprised of any complaint etc. which may have been made against him on any count.

In reply, respondent No.1 has taken the preliminary objection that the petition is not maintainable as the remedy of appeal is available to him under Rule 19 of the Rules applicable to the petitioner. The petitioner was appointed on purely temporary basis and such appointment is liable to be revoked at any time without any show cause notice etc. being issued. The reply further admits that the official car of the District and Sessions Judge was used for testing professional skills of the incumbents to the post of driver. In all, eight candidates had appeared for the viva voce and the driving test. In para-7 of the reply, it has been stated that the appointment of the petitioner as driver was contrary to the relevant

Recruitment and Promotion Rules and therefore, his appointment was rightly revoked. It is also stated that, since the petitioner was only holding a temporary post, there was no question of any stigma attaching to him by virtue of the revocation order. It is not disputed that the petitioner satisfied the essential qualifications for being considered to the post of driver. It is also not disputed that before passing the order Annexure P-7, the petitioner had not been given any show cause notice nor apprised of any fact which would render his appointment, even on temporary basis, as being illegal or against any rule or instruction. The order Annexure P-7 simply states that the services of the petitioner having been revoked on the basis of the communication in the nature of confidential letter received from this Court.

Subsequent to the filing of the petition, the petitioner was re-offered appointment. He was appointed as Orderly on adhoc basis vide order No.DSJ/EC/NHN/186-II/2002-2197, dated 27/28.6.2002 and was further appointed as Process Server on temporary basis vide order No. DSJ/EC/NHN/186/2004-1443, 21.4.2004 and continued as such on adhoc basis till 21.6.2004. Afterwards, vide order No.DSJ/EC/NHN/186/2004-2284, dated 21.6.2004 of the then Ld.Distt. and Sessions Judge, Sirmaur at Nahan, he was appointed as Driver on regular basis as per the recommendation made by the

Selection Committee and is continuing as Driver in the same Division.

Learned counsel appearing for the petitioner submits that even if the appointment of the petitioner was against the Rules, the petitioner had to be given a show cause notice so that he could represent his case. This opportunity has been denied to him and the entire proceedings have been conducted behind his back. Learned counsel further submits that the particular Rule, on which reliance has been placed to revoke the appointment of the petitioner, does not exist. He places reliance on ***Jaswant Singh & Others*** vs. ***State of M.P. and Others,(2002) 9 SCC 700*** to support his contention that the barest minimum compliance to the principle of natural justice was required.

Learned counsel appearing for respondent No.1 submits that the revocation of the appointment of the petitioner did not call for any issuance of show cause notice etc. He relied upon the judgment of the Hon'ble Supreme Court in ***Nazira Begum Lashkar and Others vs. State of Assam and Others, 2001 (1) SCC 143.***

I have gone through the case law cited before me and find that the decision in ***Jaswant Singh's*** case (supra) is attracted to the facts and circumstances of the present case. If the appointment of the petitioner was to be revoked, he should have been given a show cause notice or in any event a chance to explain his position. The judgment cited by the learned counsel for

the respondent is distinguishable and is not attracted to the present case. I have purposely refrained from referring to the complaint which forms the basis of the order of revocation of the appointment of the petitioner as it is not directed against the petitioner, but against some other officers. It would not be proper for me to make any comment on the nature of the complaint in the present proceedings. Suffice it to say that no opportunity was given to the petitioner and the order, therefore, cannot be sustained in law. Compliance of the principle of natural justice was mandatory in view of the ratio which has been laid down by the Hon'ble Supreme Court in ***Jaswant Singh's*** case (supra).

The order (Annexure P7), therefore, is quashed and set aside. Subsequent to the revocation of his appointment, the petitioner has been reappointed as noticed above. So far as the question of relief is concerned, a prayer was made on behalf of the petitioner that continuity in employment as driver be granted to him. The petitioner may make a representation to the Hon'ble Chief Justice for this purpose through proper channel.

The writ petition is, therefore, allowed. There shall be no order as to costs.

Ist January,2007. **(Dev Darshan Sud)**
(aks) **Judge.**